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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ANTHONY A., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY A.,

Defendant and Appellant.

D073256

(Super. Ct. No. JMC240254)

APPEAL from a judgment of the Superior Court of San Diego County,  
Browder A. Willis, III, Judge. Affirmed.

Jill Kent, under the appointment by the Court of Appeal, for Defendant and  
Appellant.

Xavier Beccera, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
Julie L. Garland, Assistant Attorney General, Michael Pulos and Teresa Torreblanca,  
Deputy Attorneys General for Plaintiff and Respondent.

The question of when a court may properly authorize warrantless searches of electronic devices as a condition of probation remains pending before the California Supreme Court in *In re Ricardo P.*, S230923, and numerous other cases. This case raises a similar issue. On the facts presented, we conclude there was a sufficient nexus between the electronic search conditions imposed by the juvenile court, the circumstances surrounding the defendant's criminal behavior, and the compelling need to prevent its recurrence. Accordingly, we affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

Police officers responding to a report of gang activity in a public park discovered a group of gang members, one of whom was armed. They then attempted to contact the juvenile defendant, Anthony A., who was socializing with another group of gang members. Anthony threw a knife and marijuana into the bushes as he ran from the officers. After being apprehended, he agreed the knife and marijuana were his.

In response to a juvenile court petition, Anthony admitted to possessing a concealed dirk or dagger. (Pen. Code, § 21310.) In exchange, the court dismissed the marijuana possession allegation (Health & Saf. Code, § 11357, subd. (a)(1)) with a *Harvey* waiver.<sup>1</sup> Anthony was placed on probation subject to various terms and conditions, including that he "submit to a search of any electronic device, such as a computer, electronic notepad, or cell phone, at any time without a warrant by any law

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<sup>1</sup> See generally *People v. Harvey* (1979) 25 Cal.3d 754. A *Harvey* waiver refers to a defendant's agreement that the sentencing judge can consider the entire factual background of the case, including any dismissed or stricken charges, when imposing sentence.

enforcement officer, including a probation officer." In addition, he was directed to "provide all passwords or pass phrases to any internet sites or social media sites" he used or accessed, including Facebook, Twitter, SnapChat, or Google+. When requested by any law enforcement officer, Anthony was required to "submit those websites to a search at any time without a warrant."

Anthony's counsel objected to the electronic search conditions, arguing there was no nexus between the crime and Anthony's use of social media. The juvenile court overruled the objection and imposed the conditions, explaining that access to Anthony's social media accounts would facilitate his rehabilitation by allowing law enforcement to "monitor his behavior and communication with gang members."

## DISCUSSION

A sentencing court has "broad discretion" to impose appropriate conditions of probation that facilitate rehabilitation and foster public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) This discretion is, if anything, broader when fashioning conditions for juvenile offenders. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) "We review conditions of probation for abuse of discretion. [Citations.] Generally, '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . ." [Citation.]' [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin*

(2008) 45 Cal.4th 375, 379–380 (*Olguin*), quoting *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).)

Anthony challenges the electronic search conditions imposed on him as a condition of probation. He argues the trial court abused its discretion in requiring him to submit his electronic devices to warrantless search at any time and to disclose his passwords for various social media sites. He claims there is an insufficient nexus under *Lent* between the search conditions and either the crime he committed or the goal of preventing future criminality. In a separately captioned but related argument, he contends the electronic search conditions are constitutionally overbroad.

We view Anthony's arguments as two sides of the same coin. It is undisputed that an electronic search condition—or any search condition, for that matter—implicates a probationer's constitutional privacy interests. As such, it "must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation." (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) The crucial inquiry "is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

The People effectively concede the electronic search conditions have no reasonable relationship to the specific crime Anthony admitted—possessing a knife. But the *Harvey* waiver allowed the court to consider the dismissed charge—possession of marijuana—as well as the circumstances surrounding the commission of the crimes.

Anthony's criminal history was also a relevant factor. Anthony admitted to both his probation officer and the court that his association with gang members was getting him into trouble. In terms of preventing future criminality, the court was not blind to the fact that most people, and especially juveniles, communicate by means of electronic devices. Controlled substances are purchased by means of electronic devices.<sup>2</sup> Gang members boast of accomplishments by means of social media accounts. The court could reasonably conclude that monitoring Anthony's electronic communications—by phone, texting, e-mail, and on social media sites—was critical to accomplishing important rehabilitative goals for this 17 year old.<sup>3</sup>

On the other side of the ledger, Anthony cites *Riley v. California* (2014) 573 U.S. \_\_\_\_ [134 S.Ct. 2473] (*Riley*) in asserting that his privacy interests are not insignificant. We do not disagree. Indeed, the *Riley* court concluded that those privacy interests were sufficiently weighty to generally require a warrant before law enforcement searches an arrestee's cell phone. (*Riley, supra*, at p. \_\_\_\_ [134 S.Ct. at p. 2485]; see also *Carpenter v. United States* (2018) \_\_\_\_ U.S. \_\_\_\_, [138 S.Ct. 2206, 201 L.Ed.2d 507].)

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<sup>2</sup> Anthony relies on *In re Erica R.* (2015) 240 Cal.App.4th 907 to suggest that an electronic search condition is not reasonably related to the potential future criminality of a juvenile found to have committed a drug related offense unless there is evidence in the record connecting the minor's drug possession to the use of electronic devices. To the extent *Erica R.* can be read to suggest that trial courts must turn a blind eye to the realities of modern social interaction, we respectfully disagree.

<sup>3</sup> We construe the search condition in this case as authorizing a search of the device for stored information that might be readily accessed by a traditional user within a reasonable period of time. It does not extend to any kind of forensic examination that would require an extended time period or specialized intrusive techniques.

But the competing considerations these privacy interests must be balanced against yield a different result in the specific context of a probation condition. Unlike the defendant in *Riley*, who had not been convicted of a crime at the time his cell phone was searched and was still protected by the presumption of innocence, a juvenile offender like Anthony subject to a probation order does not " 'enjoy "the absolute liberty to which every citizen is entitled." ' " (*United States v. Knights* (2001) 534 U.S. 112, 119.) Indeed, "[j]ust as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens." (*Ibid.*)

*Riley* itself made clear that although cell phone data is subject to Fourth Amendment protection, it is not "immune from search." (*Riley, supra*, 573 U.S. \_\_\_\_ [134 S.Ct. at p. 2493].) In defining the parameters of the search-incident-to-arrest exception to the warrant requirement, *Riley* compared the types and quantities of information stored on cell phones to the contents of containers typically found on an arrestee's person. (*Id.* at p. \_\_\_\_ [134 S.Ct. at p. 2489].) Here, we are not limited to comparing electronic devices to wallets and purses. The privacy of a home has traditionally been accorded the highest degree of constitutional protection (e.g., *United States v. Martinez-Fuerte* (1976) 428 U.S. 543, 561), and like an electronic device, a home often contains significant amounts of very private personal information. (See *People v. Michael E.* (2014) 230 Cal.App.4th 261, 277, quoting *United States v. Mitchell* (11th Cir. 2009) 565 F.3d 1347, 1352 ["the hard drive of a computer . . . 'is the digital equivalent of its owner's home' "].) Yet courts have historically granted probation officers significant authority to search all

areas of a probationer's residence without a warrant.<sup>4</sup> (See *People v. Balestra* (1999) 76 Cal.App.4th 57, 62, 65–68 [upholding probationer's broad home search condition]; *In re Binh L.* (1992) 5 Cal.App.4th 194, 198, 203–205 [upholding search conducted pursuant to juvenile probationer's broad search condition]; *People v. Medina* (2007) 158 Cal.App.4th 1571, 1575–1580 [upholding search conducted pursuant to probationer's broad home search condition]; *People v. Reyes* (1998) 19 Cal.4th 743, 746, 754 [upholding search conducted pursuant to parole condition requiring defendant to submit his residence and property under his control to search by law enforcement].)

Moreover, the need to effectively and efficiently monitor compliance with conditions of probation is all the more critical in a juvenile justice system focused on the rehabilitation and reformation of youthful offenders before they become hardened criminals. Violations of probation conditions quickly detected can result in prompt but often relatively minor corrective action that helps ensure the successful completion of probation. Undetected violations can quickly spin out of control, resulting in new and often serious criminal misconduct endangering innocent victims and the community as a whole.

Although an electronic search condition plainly implicates privacy rights, a juvenile offender like Anthony has a legitimately diminished expectation of privacy. The

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<sup>4</sup> It is true *Riley* notes that cell phones may contain "a broad array of private information never found in a home in any form—unless the phone is." (*Riley, supra*, 573 U.S. at p. \_\_\_\_ [134 S.Ct. at p. 2491].) But this comment was made in the context of observing that cell phones deserve *as much* protection as homes—i.e., police must obtain a warrant before they are searched.

search condition here is appropriately tailored to the state's legitimate and compelling supervisory interest. It allows juvenile probation officers to detect risky behavior and supervise Anthony's compliance with the other unchallenged supervisory terms imposed by the court, a function of crucial importance to community safety and his ultimate success. Given Anthony's limited expectation of privacy, we conclude that the state's interest in preventing future criminal behavior justifies the electronic search conditions in this case.

#### DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.